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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**

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7 JAMES RAY WALKER,  
8 Petitioner,  
9 v.  
10 WILLIAM GITTERE, *et al.*,  
11 Respondents.  
12

Case No. 2:15-cv-01240-RFB-EJY

**ORDER**

13 In this capital habeas case under 28 U.S.C. § 2254, the petitioner, James Ray Walker, seeks  
14 relief from a judgment of conviction imposing a sentence of death that was entered in the Eighth  
15 Judicial District Court for Nevada (Clark County) after a jury found him guilty of conspiracy to  
16 commit robbery, burglary, two counts of robbery with the use of a deadly weapon, attempted  
17 murder with the use of a deadly weapon, and first-degree murder with the use of a deadly weapon.  
18 Pending before the court are Respondents' Motion to Dismiss (ECF No. 135), Walker's Motion  
19 for Leave to Conduct Discovery (ECF No. 143), Walker's Motion for an Evidentiary Hearing  
20 (ECF No. 144), and Walker's Motion to Defer Adjudication of Factual Development on Cause  
21 and Prejudice (ECF No. 153). For the foregoing reasons, the court grants, in part, the Motion for  
22 Leave to Conduct Discovery and grants the Motion to Defer Adjudication of Factual Development  
23 On Cause And Prejudice. The Motion for an Evidentiary Hearing is denied without prejudice. The  
24 Court will address the Motion to Dismiss in a forthcoming order.

25 **A. Motion for Leave to Conduct Discovery**

26 Walker asks the Court to conduct discovery in relation to two claims in his Second  
27 Amended Petition: Claim Eighteen(B) and Claim Twenty-Nine. ECF No. 104. In Claim  
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1 Eighteen(B), Walker alleges that the State failed to produce Brady<sup>1</sup> evidence pertaining to a key  
 2 guilt-phase witness, Eloise Kline. In Claim Twenty-Nine, Walker alleges that his trial counsel were  
 3 ineffective for failing to investigate an investigator for the Clark County District Attorney's office  
 4 (CCDA), Peter Baldonado.

5 Rule 6(a) of the Rules Governing § 2254 Cases provides that “[a] judge may, for good  
 6 cause, authorize a party to conduct discovery under the Federal Rules of Civil Procedure . . . .” In  
 7 Bracy v. Gramley, 520 U.S. 899 (1997), the Supreme Court held that Rule 6 is to be applied  
 8 consistently with its prior opinion in Harris v. Nelson, 394 U.S. 286 (1969), which expressly called  
 9 for the adoption of the rule. 520 U.S. at 904, 909. In Harris, the Supreme Court held that “where  
 10 specific allegations before the court show reason to believe that the petitioner may, if the facts are  
 11 fully developed, be able to demonstrate that he is . . . entitled to relief, it is the duty of the court to  
 12 provide the necessary facilities and procedures for an adequate inquiry.” 394 U.S. at 300. In Bracy,  
 13 a unanimous Supreme Court overturned a decision denying discovery where the petitioner's claim  
 14 of judicial bias in his particular case was based on “only a theory,” where the claim was “not  
 15 supported by any solid evidence” with regard to the theory, and where the Supreme Court expressly  
 16 noted that “[i]t may well be, as the Court of Appeals predicted, that petitioner will be unable to  
 17 obtain evidence sufficient to support” that theory. 520 U.S. at 908–09.

18 The Ninth Circuit Court of Appeals has held—consistent with Bracy and Harris—that  
 19 discovery is available to habeas petitioners, at the discretion of the district court judge, in cases  
 20 where the discovery sought might provide support for a claim. See e.g., Pham v. Terhune, 400  
 21 F.3d 740, 743 (9th Cir. 2005); Jones v. Wood, 114 F.3d 1002, 1009 (9th Cir. 1997); see also  
 22 Osborne v. District Attorney's Office, 521 F.3d 1118, 1133 (9th Cir. 2008), rev'd on other grounds  
 23 by District Attorney's Office v. Osborne, 557 U.S. 52 (2009) (in discussing Jones, the court  
 24 reinforced the point that a court should allow discovery that “may establish” a factual basis for the  
 25 petitioner's claim).

26 As support for his motion for leave to conduct discovery, Walker relies upon a 2016  
 27 declaration from Ms. Kline. ECF No. 105-51. The declaration recounts four encounters between  
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<sup>1</sup> Brady v. Maryland, 373 U.S. 83 (1963).

1 her and the police/district attorney's office prior to her providing testimony at Walker's trial: (1)  
2 an initial encounter with officers of the Las Vegas Metropolitan Police Department (LVMPD) at  
3 the scene of the first robbery (a Save-On drugstore) wherein the officers expressed their suspicion  
4 that Kline was involved in the robbery; (2) a call to a "Secret Witness" during which she was  
5 promised \$2,000 for her cooperation if the suspect was convicted; (3) an interaction with the  
6 LVMPD and the CCDA on the morning of Walker's preliminary hearing that involved her being  
7 taken by force to the courthouse and prosecutors attempting to influence her testimony by  
8 suggesting that she could be charged with a crime; and (4) an unannounced visit to her home by  
9 Baldonado, who offered to give her money for sex. Walker has also provided evidence that  
10 Baldonado was subsequently charged with asking or receiving a bribe by a public officer,  
11 misconduct by a public officer, and sexual assault, with one of the charges alleging that he solicited  
12 sex from a witness in exchange for offering to fix warrants for that witness. ECF No. 50-5.  
13 Baldonado entered a guilty plea to misconduct by a public officer and coercion and was sentenced  
14 to serve 24 to 60 months in the custody of the Nevada Department of Corrections. Id.

15 Walker seeks leave to obtain discovery from CCDA and LVMPD. With respect to CCDA,  
16 he identifies the following material as that which he seeks to obtain: (1) Baldonado's personnel  
17 file; (2) the case files of the two prosecutors who handled Walker's case (Chris J. Owens and Bill  
18 Kephart); (3) the personnel files of the prosecutors; (4) all communications between the district  
19 attorney's office and LVMPD regarding Walker's case; and (5) any information in the possession  
20 of the district attorney's office regarding the murder of Christine Anziano and the attempted  
21 murder of Charles Cole.

22 With respect to LVMPD, he seeks to obtain (1) the entire investigative file related to the  
23 murder of Christine Anziano and the attempted murder of Charles Cole; (2) any and all police  
24 reports concerning or detailing interactions between LVMPD officers and Ms. Kline between  
25 August 23, 2003—the date Ms. Anziano was murdered—and January 9, 2007—the date Ms. Kline  
26 testified at Walker's trial; (3) any and all Secret Witness records relating to Walker's prosecution;  
27 (4) information from 19 LVMPD officers involved in Walker's case; (5) all communications  
28 between LVMPD and the district attorney regarding this case; and (6) any information possessed

1 by LVMPD regarding Walker himself.

2 The Court finds that Walker has established good cause for the court to allow discovery  
3 because discovery may support the factual basis for Claim Eighteen(B) and/or Claim Twenty-  
4 Nine. However, the Court also agrees with Respondents that the scope of the discovery Walker  
5 requests is too broad. See Bracy, 520 U.S. at 909 (“Rule 6(a) makes it clear that the scope and  
6 extent of such discovery is a matter confided to the discretion of the District Court.”). Walker’s  
7 request to see Baldonado’s personnel file, the case files of Chris J. Owens and Bill Kephart, and  
8 communications between the district attorney’s office and LVMPD regarding Walker’s case are  
9 reasonably calculated to lead to the discovery of evidence relevant to his claims that the State  
10 withheld Brady evidence pertaining to Ms. Kline and that trial counsel were ineffective for failing  
11 to investigate Baldonado. However, his request for the personnel files of Owens and Kephart lacks  
12 a sufficient nexus to the claims at issue. While he has presented evidence to substantiate Ms.  
13 Kline’s allegations against Baldonado, Walker has not established a likelihood that the prosecutors  
14 engaged in the type of misconduct that would warrant the disclosure of their personnel files.  
15 Walker’s request for *any* information in the possession of the district attorney’s office regarding  
16 the murder of Christine Anziano and the attempted murder of Charles Cole is also denied because  
17 it is not sufficiently specific to the claims at issue. The Court grants leave to request further  
18 discovery regarding the murder of Christine Anziano and the attempted murder of Charles Cole  
19 after this initial round of discovery is disclosed.

20 As for Walker’s request in relation to the LVMPD, the court concludes that Walker should  
21 be permitted to request the investigative file related to the murder of Christine Anziano and the  
22 attempted murder of Charles Cole; police reports concerning or detailing interactions between  
23 LVMPD officers and Ms. Kline between August 23, 2003 and January 9, 2007; Secret Witness  
24 records relating to Walker’s prosecution; and communications between LVMPD and the district  
25 attorney regarding this case. However, with the exception of a request for the individual files of  
26 the lead detectives on the case (Detectives Long and Sherwood), Walker’s request for  
27 “information” from 19 LVMPD officers involved in Walker’s case lacks sufficient specificity and  
28 is denied on that basis. Similarly, Walker’s request for any information possessed by LVMPD

1 regarding Walker himself is also denied as too broad in relation to the claims at issue. Again,  
2 however, Walker is granted leave to request further discovery that is more specific after the initial  
3 round of discovery is produced.

4 Thus, Walker is granted leave to serve subpoenas tailored to comply with the above rulings.  
5 The Court does not here reach the question whether any material obtained by Walker in discovery  
6 will ultimately be admissible under 28 U.S.C. § 2254(e)(2) to support his claims.

7 **B. Motion to Defer Adjudication of Factual Development on Cause and Prejudice**

8 Walker moves the Court to defer adjudication of factual development on cause and  
9 prejudice. ECF No. 153. More specifically, he asks the court “to defer any adjudication of cause  
10 and prejudice arguments and to hold his Motion for Evidentiary Hearing in abeyance until the  
11 filing of an Answer and Reply in this case.” *Id.* at 4. Walker contends that the court will be better  
12 able to assess cause and prejudice under Martinez once the relevant claims have been briefed on  
13 the merits. He further notes that a determination as to whether he can show cause and prejudice  
14 under Brady should not be made “until any and all Brady evidence has been disclosed by the  
15 State.” *Id.* at 6. According to Walker, it also follows that the decision on whether to hold an  
16 evidentiary hearing would be better addressed once merits briefing and discovery have been  
17 completed.

18 The Court finds that this is a reasonable approach. This Court commonly reserves judgment  
19 on Martinez issues until the underlying trial ineffective assistance of counsel claims have been  
20 briefed on the merits. And, because the court is permitting Walker to conduct discovery, it makes  
21 sense to wait and see if that discovery produces relevant evidence before deciding whether to hold  
22 an evidentiary hearing. Thus, Walker’s Motion to Defer Adjudication is granted. The Court will  
23 also defer its decision on his Motion for an Evidentiary Hearing pending completion of discovery  
24 and briefing on the merits of Walker’s habeas claims.

25 **IT IS THEREFORE ORDERED** that Walker’s Motion for Leave to Conduct Discovery  
26 (ECF No. 143) is **GRANTED, in part, and DENIED, in part**. Walker is granted leave to serve  
27 subpoenas on the CCDA and LVMPD as described above.

28 **IT IS FURTHER ORDERED** that Walker’s Motion to Defer Adjudication of Factual

1 Development on Cause and Prejudice (ECF No. 153) is **GRANTED**.

2 **IT IS FURTHER ORDERED** that Walker's pending Motion for an Evidentiary Hearing  
3 (ECF No. 144) is **DENIED without prejudice** to Walker renewing the motion when he files his  
4 reply on the merits of his habeas petition.

5 **IT IS FURTHER ORDERED** that the pending Motions for Extension of Time (ECF Nos.  
6 152, 156) are **GRANTED *nunc pro tunc*** as of their respective filing dates.

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8 **DATED:** April 21, 2025.

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11 **RICHARD F. BOULWARE, II**  
12 **UNITED STATES DISTRICT JUDGE**  
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